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ARIZONA ATTORNEY GENERAL

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STATE CAPITOL
PHOENIX, ARIZONA

November 27, 1973

DEPARTMENT OF LAW OPINION NO. 74-1 (R-2)

REQUESTED BY: THE HONORABLE JAMES F. McNULTY, JR.
Arizona State Senator

QUESTION: Do the amended provisions of A.R.S.
§§ 28-414, 28-981 and 28-1007, establishing
certain requirements with respect to tow
trucks and the operators of tow trucks,
apply to new car dealers who operate a tow
truck only as an incident to that business?

ANSWER: Yes.

A.R.S. § 28-414 provides:

A. The department upon issuing a chauffeur's license shall indicate thereon the class of license issued and shall appropriately examine each applicant according to the class of license applied for and may impose such rules and regulations for the exercise thereof as it may deem necessary for the safety and welfare of the traveling public.

B. No person shall drive a school bus transporting school children, or a motor vehicle when in use for the transportation of persons or property for compensation or a tow truck when in use for moving or transporting wrecked, damaged, disabled or abandoned vehicles until he has been licensed as a chauffeur for such purpose and the license so indicates. The department shall not issue a chauffeur's license for any such purpose unless the applicant has had at least one year of driving experience prior thereto and has filed with the department one or more certificates signed by a total of at least three responsible people to whom he is well known certifying as to his good character and habits and the department is fully satisfied as to the applicant's competency and fitness to be so employed. (Emphasis added.)

A.R.S. § 28-981 provides:

No person shall drive or move on any highway any motor vehicle, tow truck, trailer, semi-trailer or pole trailer, or any combination thereof unless the equipment upon any and every such vehicle is in good working order and adjustment as required in this chapter and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway. (Emphasis added.)

A.R.S. § 28-1007 provides:

A. When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and the drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered.

B. When one vehicle is towing another and the connection consists of a chain, rope or cable, there shall be displayed upon the connection a white flag or cloth not less than twelve inches square.

C. The director of the department of public safety shall adopt and enforce rules and regulations not inconsistent with this chapter to govern the design and operation of all tow trucks used for the purpose of towing wrecked, damaged, disabled or abandoned motor vehicles on any highway.

D. No person may operate a tow truck for compensation for the purpose of moving or transporting wrecked, damaged, disabled or abandoned vehicles without first registering with the director of the department of public safety and obtaining a permit pursuant to the rules and regulations governing tow trucks promulgated by the department of public safety. (Emphasis added.)

It is first important to note that these provisions are found under Title 28, Arizona Revised Statutes, which is entitled "Motor Vehicles" and, specifically, under the chapters of "Uniform Motor Vehicle Operators' and Chauffeurs' License Act" and "Uniform Act Regulating Traffic on Highways". Within these chapters of Title 28 are found the provisions concerning traffic regulations (Article 3), speed limits (Article 6), pedestrians (Article 10), vehicle equipment requirements (Article 16), and provisions requiring the inspection of certain types of vehicles (Article 17). These regulations are all concerned with the safe operation of motor vehicles on Arizona streets and highways, and the provisions in question fall within this category.

The fact that these provisions are intended for the protection of the general public can be seen from the language of the provisions themselves. The last line of A.R.S. § 28-414.A states: ". . . for the safety and welfare of the traveling public." Similarly, to insure that individuals entrusted with the driving of tow trucks and other motor vehicles used for transport are experienced, capable and responsible drivers, the Legislature enacted A.R.S. § 28-414.B requiring drivers of these vehicles to hold a chauffeur's license. And A.R.S. § 28-981 requires all motor vehicles or tow trucks to be in good working order so as not to endanger the driver or other occupant or any person on the highway. And, finally, A.R.S. § 28-1007 prescribes certain safety regulations for towing vehicles and authorizes the Department of Public Safety to insure that tow trucks and their operators comply with the necessary safety provisions.

These provisions, by virtue of the language used and the chapters wherein they are categorized, were clearly enacted as general safety regulations. Moreover, although the language of the statutes refers to tow trucks, the Legislature made no indication that it meant to regulate only certain types of tow trucks or tow truck operators; rather, "tow trucks" were referred to in such a way as to indicate that all tow trucks and tow truck operators were to be regulated by these safety provisions.

In enacting the legislation in question, the Legislature relied on the State's police powers to regulate for the health, safety and welfare of the general public. As was noted by the Arizona Supreme Court in the case of Campbell v. Superior Court in and for Maricopa County, 106 Ariz. 542, 479 P.2d 685 (1971):

The use of the highways is a right which all qualified citizens possess subject to reasonable regulation under the police power of the sovereign. 479 P.2d at 685.

The specific exercise of state police power in enacting legislation intended to provide public safety in general through the regulation of motor vehicles is explained at 7 Am.Jur.2d, Automobiles and Highway Traffic, § 10, where it is stated:

It is well settled that the use of highways and streets by vehicular or pedestrian traffic may be limited, controlled, and regulated by the responsible public authority in the exercise of the police power whenever, and to the extent, necessary to provide for and promote the safety, peace, health, morals, and general welfare of the people. Such use of public highways and streets is subject to such reasonable and impartial regulations adopted pursuant to the police power as are calculated to secure to the general public the largest practical benefit from the enjoyment of the right of use. . . .

It was on this basis that the provisions in question were enacted, and in order to fulfill the purpose of the legislation--that of insuring public safety--all types and classes of tow trucks must be covered. For this reason it follows that all tow trucks and tow truck operators are intended to fall within the purview of the legislation. A distinction between tow truck operators who operate tow trucks as their sole business and tow truck operators who operate tow trucks as an incident to another business would be inconsistent with the purpose of the statutes in question. The statutory language employed in these provisions is clear and unambiguous and makes no distinctions between types of tow truck operators, and to infer such would destroy the purpose of this specific legislation.

It is true that the Arizona courts have, on a number of occasions, recognized the distinction referred to above; however, these cases are all concerned with the rules and regulations of common carriers by the Corporation Commission. Moreover, this distinction is specifically set forth in A.R.S. § 40-601.A.8, where it is stated that a "private motor carrier" is a tow truck:

. . . operated in connection with an automobile repair or service business or a wrecking yard [and] shall be deemed to be incidental to a commercial enterprise, and the operator thereof shall be deemed to be a private motor carrier when engaged in such operations. . . .

Private motor carriers, classified as such, are not subject to the rules, regulations and taxation prescribed and levied by the Corporation Commission upon those carriers which utilize the State's highways as their sole business. Arizona Corporation Commission v. S & L Service, Inc., 93 Ariz. 380, 381 P.2d 104 (1963). This distinction was drawn solely for the purposes of Corporation Commission regulations which make Title 40, Arizona Revised Statutes. As was stated in Corporation Commission v. S & L Service, Inc., supra, in quoting from the Arizona Constitution, Article 15, § 3:

"The Corporation Commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the State for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the State. * * *

Thus a distinction has been drawn between tow truck operators which make hauling of one kind or another their sole business and operations in which tow trucks are an incident of some other type of business; hence, the distinction between tow truck businesses and businesses such as new car dealers which also operate tow trucks. This distinction was set forth by the Arizona Legislature for the purpose of levying special license taxes and authorizing the Corporation Commission to prescribe rules and regulations for the business operation of common carriers as opposed to private carriers. The distinction is only found under and only pertains to Title 40, Arizona Revised Statutes, which contains statutes applicable to the Corporation Commission and the businesses involved with public transport.

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Moreover, it is important that under Title 40, specifically A.R.S. § 40-601.A.8, the Arizona Legislature plainly set forth the distinction between types of tow truck operators. Had the Legislature intended to apply this same distinction to the statutes in question here, it seems that it would have clearly noted the distinction as it did in Title 40, Arizona Revised Statutes.

Therefore, since the statutory provisions in question were clearly enacted for the public safety in general, and since the language of the provisions is clear and unambiguous, it follows that the Arizona Legislature intended no exemptions in enacting the legislation in question.

Therefore, it is the opinion of this office that the requirements contained in A.R.S. §§ 28-414, 28-981 and 28-1007 apply to all tow trucks and tow truck operators without exception.

Respectfully submitted,

A large, stylized handwritten signature in dark ink, reading "Gary K. Nelson". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

GARY K. NELSON
The Attorney General

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